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Cordell
- 94. (New) A process according to claim 93, wherein said additional quantity of said antibiotic is selected from the group consisting of chlortetracycline and oxytetracycline.
- 95. (New) A process according to claim 94, wherein said additional quantity of said antibiotic comprises chlortetracycline calcium complex.
- 96. (New) A process according to claim 94, wherein said additional quantity of said antibiotic comprises oxytetracycline calcium complex.
- 97. (New) A process of claim 89, wherein said additional quantity of said antibiotic comprises crude crystals of said antibiotic obtained by drying a filtrate obtained from an acidified fermentation broth.
- 98. (New) A process for the production of a particulate, substantially dustless animal feed supplement comprising fermentation solids comprising an antibiotic product of a fermentation product, said process comprising the steps of blending said fermentation solids with an edible feed material and a mineral product to produce a mixture thereof.--
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REMARKS

Claims 1-10 and 57-97 are pending in the application. Applicants respectfully request entry of the above amendment. Support for the amendment may be found in the specification and claims as originally filed.

RESTRICTION REQUIREMENT

The Examiner has required election between Group I (claims 1-10, 30, 38, 46, and 55, now claims 1-10, 57-87), Group II (claims 11-19 and 48-54, now claim 98), Group III (claims 20-29, 32-37, and 40-45, now claims 88-97) and Group IV (claims 31, 39, 47, and 56, now claims 76 and 86). Applicant elects Group I. The restriction requirement is traversed as being improper.

The Examiner has the initial burden of showing:

- (1) that the restricted groups are independent or distinct; and
- (2) that there would be a serious burden on the Examiner if restriction is not required.

M.P.E.P. § 803.01.

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Applicants respectfully submit that the Examiner has not met the burden of showing that the inventions are either independent or patentably distinct.

The restriction requirement merely states that:

The products and processes of Groups I-IV are independent and patentably distinct inventions, as the feeds of Groups I [sic] can be made by other processes, and the processes of Groups II and III can produce other products, all of which can be used in methods other sheen [sic] of Group IV

Applicants submit that the Examiner's unsupported conclusions are insufficient to meet his burden of showing distinctness, since "Examiners *must* provide reasons and/or examples to support conclusions." [Emphasis added]. M.P.E.P. § 803.01.

With respect to process of making and product made, attention is invited to M.P.E.P. § 806.05(f). The examiner has not demonstrated that the product can be made by another process or that the process can be used to make other products.

With respect to product and process of using, attention is invited to 806.05(h). The Examiner has not demonstrated that the process of using as claimed can be practiced with another materially different product, or that the product as claimed can be used in a materially different process. As stated in M.P.E.P. § 806.05(h), "The burden is on the examiner to provide an example" The Examiner has not provided any example.

Applicants respectfully submit that the restriction requirement is deficient in that it merely concludes that the inventions are patentably distinct without providing any examples. The purpose of requiring the examiner to allege examples is to allow applicants an opportunity for rebuttal, whereby the Examiner must then either document or otherwise support a viable alternative or withdraw the requirement for restriction. By providing only conclusions without support, the Examiner is depriving applicants of an opportunity to rebut such conclusions. It is unfair to force applicants to incur the additional time and expense of dividing the invention among multiple applications without at least providing reasonable examples supporting the restriction requirement and allowing applicants an opportunity for rebuttal. Therefore, it is respectfully requested that the

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Examiner either support the restriction with examples as required by the M.P.E.P. or withdraw the restriction requirement.

Additionally, the Examiner has not demonstrated that there would be a serious burden if the Groups were to be Examined together. M.P.E.P. § 803 states that "if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." M.P.E.P. § 803 does state that showing separate classification can be shown to show a *prima facie* serious burden. However, the Examiner has not properly shown separate classification.

As for Group I, drawn to a granular feed, the Examiner alleges classification in class 426, subclass 54. This appears to be an incorrect classification since class 426/54 is a subset of class 7 drawn to fermentation processes.

As for Group III, drawn to a process for preparing animal feed supplements, the Examiner alleges that the claims are classified in class 435, subclass 40.5. Class 435/40.5 appears to be directed to "Measuring or testing process involving enzymes or micro-organisms; composition or test strip therefore; processes of forming such composition or test strip" > "Involving fixed or stabilized, nonliving microorganism, cell, or tissue (e.g., processes of staining, stabilizing, dehydrating, etc.; compositions used therefore." Since Group III is not directed to measuring or testing processes or a composition or test strip used therefore, this classification appears to be incorrect and thus, fails to show serious burden.

As for Group IV, drawn to methods of use, the Examiner states that the claims are classified in class 424, subclass 442. This class, however, is also directed to compositions ("Preparations characterized by special physical form > specially adapted for ruminant animal > animal food"). Thus, the composition and method actually appear to share the same classification thus demonstrating a lack of serious burden, at least in Examining Groups I and IV together.

For the above reasons, it is submitted that the restriction requirement is improper because the Examiner has not met his initial burden of providing supporting examples showing that the present claims are patentably distinct. Also, the classification alleged by the Examiner appears to be incorrect, and thus, the Examiner has not demonstrated any serious burden in Examining the Groups

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together. Withdrawal of the restriction requirement and examination all claims pending herein, together and in their entireties, is respectfully requested.

ELECTION OF SPECIES

The Examiner has also required election of a single feed species. Applicant elects the feed species of claim 84, with traverse. The election of species requirement is improper since the Examiner has not stated which species are deemed to be patentably distinct. Applicant assumes that in the event that the elected species is found to be allowable the examination will be extended to include additional species as indicated in M.P.E.P. §§ 803.02 and 809.02(c). Claims 1-5, 7-10, 57-61, 63-71, 73-82, 84-94, and 96-98 are readable on the elected species.

Respectfully submitted,

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